HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

WRIT APPEAL NO.724 OF 2006

Between:

The President, A.P. Government
Vehicle Drivers Association,
Warangal District, and others

. . .Appellants

AND

The Government of Andhra Pradesh
and others

. . .Respondents

Counsel for the appellants : Shri P.Pankaj Reddy

Counsel for the respondent Nos.1 to 5: Government Pleader for Revenue

Counsel for the respondent No.6 : Shri Narender

Dated: 10th July, 2006

: JUDGMENT :

PER G.S.SINGHVI, CJ

After independence, people living in different parts of the country have witnessed widespread land grabbing and unchecked encroachments of public lands and properties. People living in every city and town in the country, big or small, have suffered on account of land grabbing and encroachment of public properties. As a consequence of encroachment of public lands and properties, the residents of every urban area have to suffer the agony of long queues of vehicles on the road, traffic chaos, high degree of pollution etc. The cities of the State of Andhra Pradesh are no exception. In every part of the State, the lands earmarked for or sought to be utilized for widening of roads and construction of buildings meant for institutions and public facilities have been encroached by unscrupulous elements. The Courts are also burdened with litigation by the land grabbers and encroachers who question the action taken by the public authorities to re-claim possession of the public properties. Some of the decisions rendered by the Courts, including the famous judgment in **Olga Tellis v. Bombay Municipal Corporation**[1] have been widely misused by those who take law into their hands and grab public properties for seeking protection of illegal encroachments of public lands by invoking Articles 14 and 21 of the Constitution of India and rules of audi alteram partem. In the State of Andhra Pradesh in general, and cities like Hyderabad, Secunderabad, Ranga Reddy, Visakhapatnam, Guntur, East Godavari at Rajahmundry and Vijayawada, a large number of persons involved in grabbing public land and properties have got protection of ad-interim injunctions

passed by the Civil Courts. Some of the judicial officers seem to be totally unmindful to the incalculable injury caused to public interest by grant of injunctions, which protect land grabbers and encroachers. Therefore, it is worthwhile to draw the attention of the members of the subordinate judiciary in the State to the recent judgment of the Supreme Court in **Seema Arshad Zaheer v. Municipal Corporation of Greater Mumbai**[2]. In that case, after a detailed survey of the judicial precedents on the subject, the Supreme Court unequivocally held that the Courts should not protect the possession of those who grab public lands or make encroachment without any semblance of right. The propositions laid down in that case reads as under:

1) The discretion of the Court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff: (i) existence of a prima facie case as pleaded, necessitating protection of plaintiff's rights by issue of a temporary injunction; (ii) when the need for protection of plaintiff's rights is compared with or weighed against the need for protection of defendant's rights or likely infringement of defendant's rights, the balance of convenience tilting in favour of plaintiff; and (iii) clear possibility of irreparable injury being caused to plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the court with clean hands.

2) It is true that in cases relating to orders for demolition of buildings, irreparable loss may occur if the structure is demolished even before trial, and an opportunity to establish by evidence that the structure was authorized and not illegal. In such cases, where prima facie case is made out, the balance of convenience automatically tilts in favour of plaintiff and a temporary injunction will be issued to preserve status quo. But where the plaintiffs do not make out a prima facie case for grant of an injunction and the documents produced clearly show that the structures are unauthorized, the court may not grant a temporary injunction merely on the ground of sympathy or hardship. To grant a

temporary injunction, where the structure is clearly unauthorized and the final order passed by the Commissioner (of the Corporation) after considering the entire material directing demolition, is not shown to suffer from any infirmity, would be to encourage and perpetuate an illegality. We may refer to the following observations of this Court in **M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu {(1999) 6 SCC 464}** made in a different context:

> "This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorized. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorized construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is requires to be exercised has to be in accordance with law and set legal principles.

3) Where the lower court acts arbitrarily, capriciously or perversely in the exercise of its discretion, the appellate court will interfere. Exercise of discretion by granting a temporary injunction when there is 'no material', or refusing to grant a temporary injunction by ignoring the relevant documents produced, are instances of action which are termed as arbitrary, capricious or perverse. When we refer to acting on 'no material' (similar to 'no evidence'), we refer not only to cases where there is total dearth of material, but also to cases where there is no relevant material or where the material, taken as a whole, is not reasonably capable of supporting the exercise of discretion. In this case, there was 'no material' to make out a prima facie case and therefore, the High Court in its appellate jurisdiction, was justified in interfering in the matter and vacating the temporary

injunction granted by the trial court."

The aforementioned judgment reflects the Court's realization that undue insistence on the compliance of the rules of natural justice for protecting landgrabbers and encroachers of public land and property has only encouraged them to take law into their own hands. Therefore, it is imperative for the civil courts to be extremely circumspect in granting ad-interim injunctions in favour of the persons who come to the Court for protecting their unauthorized occupation of public land and properties. In all such cases, the Courts should exercise restraint. The Presiding Officers should take into consideration the element of public interest, apart from other three factors before passing an order of injunction. They should, as far as possible, avoid passing of ex parte order of injunction. I may hasten to add that this should not be construed as a mandate of the High Court not to pass any order of ex parte injunction in any situation.

The members of appellant No.1 and appellant Nos.2 to 11 also belong to the creed of those who unauthorisedly take possession of the public land and then seek protection of the Court against the action initiated by the public authorities to retrieve possession of such land. They unauthorisedly occupied land measuring Ac.5-03 guntas comprised in Survey Nos.54/1 and 54/2 situated at Waddepally Village. They tried to perpetuate the same with the active connivance of the then Collector of Warangal who issued R.C.No.B7-3215/1984 dated 18.06.1984 permitting President of appellant No.1 association to erect boundary stones or dig trench on all sides of the land in question. After 21 years, the appellants invoked jurisdiction of this Court by filing W.P.No.8852 of 2005 and succeeded in persuading the learned Single Judge to pass an order of status quo. After another one year, they filed W.P.No.7143 of 2006 for restraining Mandal Revenue Officer, Hanamkonda, Warangal from interfering with their possession and for issue of a mandamus to respondent Nos.1 and 2 to finalise the

alienation proposal in their favour.

Learned Single Judge took cognizance of the statement made by the Assistant Government Pleader for Revenue (Assignment) that in view of the order of status quo passed in Writ Petition No.8852 of 2005, the Mandal Revenue Officer has not interfered with the possession of the appellants and that the temporary structures raised on the land in question have not been demolished, and dismissed the writ petition. The learned Single Judge held that the writ petition was wholly misconceived insofar as the petitioners' prayer for restraining the respondents from interfering with their possession is concerned. The learned Single Judge then observed that if there has been any violation of the order of status quo passed in Writ Petition No.8852 of 2005, the aggrieved person can initiate contempt proceedings. In regard to the petitioners' prayer for issue of a direction to allot land to them, the learned Single Judge observed that the State Government has already called for a report from the District Collector, vide Memo dated 26-4-2005 and, therefore, no further order is required to be passed.

Learned counsel for the appellants relied on G.O.Ms.No.546, Revenue (Q-2), dated 26.04.1975 vide which the State Government, in exercise of the power vested in it under Section 172 of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 F framed the "Rules for Assignment of House Sites in Villages and Towns in Telangana Area" and argued that respondents cannot forcibly evict the members of appellant No.1 association and other appellants till the applications made by them for allotment of land in question for construction of houses are finally disposed of. Learned counsel relied on communication dated 01.06.2005 sent by Commissioner of Land Administration, Andhra Pradesh, Hyderabad to Collector, Warangal requiring the Collector to submit report on the applications made by the members of appellant No.1 and other appellants and submitted that respondents should be restrained from dispossessing the appellants

till the decision of their applications. In the end, he submitted that pendency of Writ Petition No.8852 of 2005 should not have been made a ground by the learned Single Judge for refusing to entertain the writ petition.

Learned Government Pleader for Assignment supported the order under challenge and argued that second writ petition filed by appellant No.1 and some members of the association was rightly dismissed by the learned Single Judge.

We have thoughtfully considered the entire matter and are convinced that the appeal is meritless and is liable to be dismissed. It needs no emphasis that power and jurisdiction of the High Court to issue prerogative writs or orders or directions is meant for protecting legal and constitutional rights of the citizens and others and not for perpetuating illegalities. Therefore, this power cannot be exercised for legitimizing illegal occupation of public land or protecting encroachers of public properties.

The appellants have claimed protection of their possession over land comprised in Survey Nos.54/1 and 54/2 by asserting that applications made by them for alienation are pending with the State Government. However, they have not produced any document or other evidence to establish any semblance of right to retain possession of the land. They have neither pleaded nor any material has been placed before the Court to show that the land in question was leased out to them or they were given licence by the competent authority to occupy the same. Therefore, mere pendency of applications made by them for allotment of land in question cannot justify issue of a direction by the Court to protect their possession. In any case, in view of the order of status quo passed in Writ Petition No.8852 of 2005, we do not find any justification to pass another order of status quo.

The submission of the learned counsel that the earlier writ petition has been filed by some other office bearer of appellant No.1 and, therefore, the present appellants cannot be deprived of their

legitimate right to seek protection of the Court is wholly unconvincing and merits rejection because both the petitions have been filed by the same association.

The argument of the learned counsel, which is founded on Rule 14 of the Rules, is also untenable. That rule can be invoked by Collector for private sale of town site, only if market value of the land does not exceed Rs.1,000/-. It is neither the pleaded case of the appellants nor any evidence has been brought on the record of this appeal that market value of the land illegally occupied by them is less than Rs.1,000/-. Therefore, it is not possible to entertain the appellants' prayer for directing the respondents to allot land to them by invoking Rule 14 of the Rules.

For the reasons mentioned above, the appeal is dismissed. However, it is made clear that this order shall not be treated as a conclusive pronouncement on the applicability of Rule 14 of the Rules to the case of the appellants.

G.S.SINGHVI, CJ

G.V.SEETHAPATHY, J

Date: 10.07.2006

svs

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[1] AIR 1986 SC 180

[2] JT 2006 (11) SC 1